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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM 1929.

No. 307.

PHOENIX INDEMNITY CO.,

Appellee,

against

THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY,

Appellant.

APPELLANT'S STATEMENT ON JURISDICTION.

FREDERICK H. WOOD,
Counsel for Appellant.

TABLE OF CONTENTS.

	PAGE
A—Statutory Provisions Relied on	1
B—Date of Judgment and of Appeal	2
C—Nature of Case and of Rulings Below	2
D—Cases Believed to Sustain Jurisdiction of This Court	3

CASES CITED.

People ex rel. Bryant v. Zimmerman, 49 Sup. Ct. Rep. 61 (1928)	3
Whitney v. People of State of California, 274 U. S. 357 (1927)	3

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APPELLANT'S STATEMENT ON JURISDICTION.

The case and the record in the above-entitled appeal were filed with the clerk of this court on August 7, 1929. This statement is filed within thirty days thereafter pursuant to Rule 12.

A. *Statutory Provisions Relied on.*

The statutory provisions believed to sustain the jurisdiction of this court are that portion of subsection (a) of Section 344, Title 28, U. S. C. A. (Judicial Code, Sec. 237, as amended), which gives this court jurisdiction to review upon a writ of error:

> "A final judgment * * * in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question * * * the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity * * *"

and subsection (a) of Section 861, Title 28, U. S. C. A., which provides that all relief formerly obtainable by writ of error is now obtainable by appeal.

B. *Date of Judgment and of Appeal.*

This appeal is from a judgment and decision of the Court of Appeals of the State of New York, dated May 28, 1929 (R. 23), upon which a final judgment in the suit was entered in the office of the clerk of the Supreme Court of the State of New York, County of Richmond, on June 18, 1929 (R. 40, 41).

The appeal was allowed by the Court of Appeals on July 9, 1929 (R. 46, 47), or within three months after the entry of the final judgment appealed from on an application presented to said court on July 5, 1929 (R. 42-45), all in accordance with U. S. C. A. Title 28, Section 350; R. S. Section 1008, as amended.

C. *Nature of Case and of Rulings Below.*

The sole question presented on this appeal is the constitutionality of Section 29 of the New York Workmen's Compensation Law (Laws of 1922, Chap. 615), as interpreted by the Court of Appeals of that State.

This suit was instituted in the Supreme Court of the State of New York, County of Richmond, as authorized by the State practice (C. P. A., Secs. 546-548), by the filing of an agreed statement of facts and without formal pleadings, and was brought by the appellee to recover from the appellant, under said Section 29 of the New York Workmen's Compensation Law, a sum equal to two awards, each in the sum of $500, made pursuant to subsections (8) and (9) of Section 15 of said Workmen's Compensation Law, in favor of the Treasurer of the State of New York and against appellee, who had paid the awards to the State Treasurer prior to the institution of this suit (R. 1-9). In accordance with the State practice it was tried in the first instance by the Appellate Division of the Supreme Court, Second Department, and resulted in

a judgment against the appellant and in favor of the appellee for the sum of $1,000 and costs (R. 40, 41), from which an appeal was taken to the State Court of Appeals. The appellant defended both in the court of first instance (the Appellate Division) and in the Court of Appeals upon the ground that the State statute, pursuant to which recovery was allowed (New York Workmen's Compensation Law, Sec. 29), deprived the appellant of its property without due process of law, and deprived it of the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States. That the Federal question thus presented was raised in, and considered and passed upon by both the court of first instance and the Court of Appeals, is necessarily involved in the decision upon which final judgment has been entered, and that such decision was in favor of the validity of said State statute expressly appears from the opinion of the Appellate Division (R. 32-36, see particularly beginning at bottom of p. 34), from the opinion of the Court of Appeals (R. 12-23, see particularly beginning the middle of p. 15), from the dissenting opinion of Judge Lehman of the Court of Appeals concurred in by Judge Kellogg (R. 23-31), and from the remittitur of the Court of Appeals (R. 37-39, particularly p. 38). That the question presented has been properly raised in this court appears from the assignment of errors (R. 42-45).

D. *Cases Believed to Sustain the Jurisdiction of This Court.*

People ex rel. Bryant v. *Zimmerman,* 49 Sup. Ct. Rep. 61 (1928).

Whitney v. *People of State of California,* 274 U. S. 357 (1927).

Respectfully submitted,

FREDERICK H. WOOD,
Counsel for Appellant.